

HOUSE BILL 2420
By Venable

AN ACT to amend Tennessee Code Annotated, Title 67, Chapter 3,
to provide for the taxation of motor vehicle fuel at the point
such fuel is first sold in Tennessee.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 67-3-103, is amended by substituting
language so that, as amended, it shall read as follows:

(a) It is unlawful for any distributor or dealer (except retailers dealing in products
which have previously been the measure of a privilege tax) to engage in the business of
selling, storing or distributing, in intrastate commerce, gasoline, without first having
obtained from the Commissioner a gasoline permit to carry on the business.

(b) A gasoline permit issued by the Commissioner under this requirement shall
be designated as either class "A" or class "B."

(1) A class A permit shall be issuable to an applicant authorized to deal in
gasoline which has not been identified previously as a measure of tax liability of a
distributor or dealer who is registered as such in this state and is authorized to
either import or export the products into or from this state or to make sales of
those products within this state. Class A permits issued to applicants who are
engaged in the business of refining gasoline within or without the state shall
identify the applicant as a refiner.

(2) A class B permit shall be issuable to an applicant authorized to deal only in gasoline which has been identified as a measure of tax liability and on which the tax either has been paid already or is payable by a distributor or dealer who is registered as such in this state and is authorized to make sales of gasoline only within this state.

(c) A person desiring a permit to engage in the business of distributor or dealer or to otherwise engage in distributing and storing gasoline shall make application in writing to the Commissioner, on forms provided by the Commissioner. The application shall show the information which the Commissioner deems necessary to effectuate the purposes of this part.

(d) The Commissioner of Revenue may refuse to issue any license, authorization or permit provided for by this section in the event that:

(1) The application is made by a person whose license, authorization or permit has at any time theretofore been canceled for cause by the Commissioner.

(2) Information on the application has been falsified, is fraudulent, incomplete, or has in any material way misrepresented the true facts.

(3) The applicant, the applicant's agent or an officer or employee of the applicant's business has, in any state, federal or foreign jurisdiction, been convicted of a felony related to any tax matter, or aiding or abetting such a felony.

(4) The applicant, the applicant's agent or an officer or employee of the applicant's business has, within the last five (5) years, had a gasoline or motor vehicle fuel tax license or permit revoked for cause by any jurisdiction.

(5) The application is filed by a person as a subterfuge for the real person in interest when, had the real person in interest applied for the license,

authorization or permit, the Commissioner would have refused to issue same due to any cause set forth in this subsection.

SECTION 2. Tennessee Code Annotated, Section 67-3-110, is amended by substituting language so that, as amended, it shall read as follows:

The permit of every person licensed under § 67-3-103 who fails to keep the records, make and deliver the statements and reports required, or to pay the taxes accrued before they become delinquent, or to make and maintain bond as required by law, shall be subject to revocation by the Commissioner. When thus revoked, it is unlawful for the person to whom the permit was issued to continue in the business.

SECTION 3. Tennessee Code Annotated, Section 67-3-111, is amended so that, as amended it shall read as follows:

(a) Whenever gasoline, distillate, or motor vehicle fuels subject to the taxes imposed by §§ 67-3-603, 67-3-803 and 67-3-904 shall be transported in this state by any person in any quantity, the transporter shall be required, at the time of delivery, to give to the person receiving any of the petroleum products a pre-numbered invoice or sales ticket showing thereon the permit number of the person delivering or distributing the petroleum products, the number of gallons and the date of delivery. Any transporter of such fuel shall also, at all times, keep on board the vehicle in which the fuel is being carried a bill of lading from the person from whom he acquired the fuel as well as a driver manifest showing the exact destination of such fuel. The documentation required above shall be kept on file by the person transporting fuel, subject to inspection during reasonable business hours by the Commissioner or the Commissioner's delegate for a period of three (3) years from December 31 of the year in which issued. The failure of any person to either execute or maintain an invoice as required herein shall render the person liable for the tax payable on the product.

(b) Whenever selling diesel fuel which is indelibly dyed in accordance with internal revenue service regulations and is legal for exempt use only, the seller must include the following statement on the invoice to the buyer, if the fuel is located outside the bulk transfer/terminal and is not sold from a retail pump posted with the statement: "DYED DIESEL FUEL - NONTAXABLE USE ONLY - PENALTY FOR TAXABLE USE."

SECTION 4. Tennessee Code Annotated, Section 67-3-401, is amended so that, as amended it shall read as follows:

(a) A political subdivision, governmental body, or agency which uses gasoline which such governmental unit purchases and is shipped in lots of at least five hundred (500) gallons from points either within or without the state shall be exempted from the payment of both the gasoline privilege tax and special tax on petroleum products. This exemption shall apply only when the gasoline or is received, stored, handled, and used as provided under this part. The exemption is expressly limited to a political subdivision, governmental body, or agency of this state or of the federal government.

(b) As used in this part, "political subdivision, governmental body, or agency of this state or of the federal government" includes rescue squads which are chartered by the state as corporations not for profit or otherwise existing as nonprofit associations, and members of the Tennessee Association of Rescue Squads and Volunteer Fire Departments which are chartered by the state as corporations nonprofit or otherwise existing as nonprofit associations. Such rescue squads and volunteer fire departments are exempted from the payment of such taxes in the same manner as such governmental units; provided, that such nontaxed gasoline is used exclusively in vehicles owned by such rescue squads and volunteer fire departments and operated only for such association's purposes.

(c) Political subdivisions, governmental bodies and agencies are not exempt from the payment of the motor vehicle fuel use tax imposed in Part 8 of this Chapter but

are hereby expressly authorized to purchase dyed fuel from suppliers or distributors for use in their vehicles on the streets, roads and highways of this state solely for governmental purposes.

(d) No exemption shall be authorized under this section unless the delivery of each lot is at least five hundred gallons (500 gals.) and is completed within seventy-two (72) hours following commencement of the delivery.

SECTION 5. Tennessee Code Annotated, Section 67-3-402, is amended so that, as amended it shall read as follows:

(a) In order to be entitled to the exemption authorized to governmental agencies, gasoline shall be received, stored, handled and used strictly in the following manner:

(1) Shipped in lots of at least five hundred gallons (500 gals.), except as provided in subdivision (a)(2)(B);

(2) (A) Stored by the governmental unit in a storage facility either owned or leased by the governmental unit. In the event the facility is leased, it shall be separate and apart from the commercial storage facilities of any gasoline dealer or distributor, and the storage facility must be kept under the exclusive control of the governmental unit at all times. In order for the leased facility to comply with the provisions of this subdivision, a copy of the lease must be filed with and approved by the Commissioner;

(B) In lieu of the provisions set out in subdivision (a)(2)(A), gasoline may be delivered to a governmental body through a customer-controlled pump. For this purpose, a "customer-controlled pump" is a pump used for dispensing gasoline directly to a customer who can access the pump by way of a personal key, an identification number, or a customer card which is assigned to the customer by a licensed seller or distributor. A bonded dealer or distributor may locate such pump(s) at a location other than the bonded dealer's or distributor's

primary storage location. A customer-controlled pump shall not be located on any retail filling station island. Such pump(s) must be connected to a storage tank whose inventory is owned by the holder of a class A or class B gasoline permit. Any holder of a valid class A or class B gasoline permit found violating any statute or any rule promulgated by the Commissioner relating to a customer-controlled pump shall lose the right to make sales from a customer-controlled pump for a period of not less than two (2) years, and shall be subject to all other penalties set forth in the law. A person associated with a retail filling station shall neither take part in the dispensing or sale of gasoline from such pumps, nor shall such person have in such person's possession any key that will activate any meter that may be used for dispensing such fuel. A customer controlled pump shall have the ability to identify each customer separately and only that customer shall be allowed to purchase fuel through that identity at the pump. One (1) invoice exclusively for sales from a customer controlled pump shall be issued on the last day of any month in which a tax refund on sales to governmental entities is claimed. Such invoice shall clearly identify itself as an invoice solely for sales through a customer controlled pump. Sales through a customer controlled pump are not subject to the minimum purchase requirements of this part.

(3) Removed from the storage facility in equipment either owned or leased by the governmental unit;

(4) Used exclusively for governmental purposes, in equipment either owned or leased by the governmental unit and operated by governmental employees; and

(5) Purchased only from a bonded dealer or distributor.

(b) It is unlawful for any person to use gasoline purchased by a governmental unit and on which a tax refund has been made under this section for any purpose other than governmental.

(c) Notwithstanding the provisions of subdivisions (a)(3) and (4), and for the purposes of this part, a motor vehicle operated by any governmental unit owning or leasing a storage facility for gasoline, as provided in subdivision (a)(2), and used exclusively in a driver education program approved by the state board of education, shall be considered as equipment owned by the governmental unit.

(d) (1) Notwithstanding the provisions of subdivisions (a)(2)-(4), and for the purposes of this part, a motor vehicle operated by any governmental unit shall be considered as owned, used and operated by the governmental unit if the gasoline shall be:

(A) Used exclusively for the purpose of providing mass transportation services, paratransit service to or for the benefit of elderly and handicapped persons or other specialized mass transportation services of a public transportation system or transit authority organized and existing under and by virtue of title 7, chapter 56, and operated by non-governmental employees; or

(B) Stored by the governmental unit in a storage facility or tank(s) leased by the governmental unit on the premises of an individual or firm providing mass transportation services, paratransit services to or for the benefit of elderly and handicapped persons, or other mass transportation services of and pursuant to contract with such a public transportation system or transit authority. Such leased storage facility or tank(s) shall be separate and apart from the other commercial storage facilities and tank(s) on the premises, and the leased storage facility or tank(s) must be

kept and maintained for the exclusive use and storage of gasoline and distillate stored by the governmental entity for operation of such mass transportation services, paratransit services to or for the benefit of elderly and handicapped persons or other specialized mass transportation services at all times and for no other purpose.

(2) Subdivision (d)(1) shall apply with respect to motor vehicles, mass transportation services, paratransit services to or for the benefit of elderly and handicapped persons or other specialized mass transportation services of a public transportation system or transit authority, and storage facility or tank(s) leased by a governmental unit as set forth in subdivision (d)(1).

(e) Notwithstanding any other provision of this part to the contrary, a governmental body may purchase gasoline or undyed motor vehicle fuel from retail filling stations free of tax imposed by parts 6, 8 and 9 of this chapter. Such tax free purchases can only be made, however, through a fleet credit card which has been issued to a governmental body which holds an exemption permit issued by the Commissioner pursuant to this part.

SECTION 6. Tennessee Code Annotated, Section 67-3-403, is amended so that, as amended, it shall read as follows:

(a) In order to be entitled to an exemption under this part, each governmental unit making purchases of gasoline shall, prior to the purchase of such gasoline, be the holder of a valid exemption permit issued by the Commissioner. The exemption permit shall be numbered and shall entitle such governmental unit to purchase gasoline tax exempt for a period of three (3) years from the date of issuance.

(b) In order to procure a permit, a governmental unit shall file with the Department an application executed, under oath, on forms prescribed and furnished by the Commissioner.

(c) Any such exemption permit issued by the Commissioner shall be valid for a period of three (3) years from the date of issuance after which any governmental unit must file an application for renewal permit by December 31 of the renewal year, or such exemption will be of no further effect.

(d) If any governmental unit, to which an exemption permit has been issued, loses its status as a governmental unit during the effective period of any such permit, the permit shall be void and shall be immediately surrendered to the Department.

SECTION 7. Tennessee Code Annotated, Section 67-3-404, is amended so that, as amended, it shall read as follows:

(a) A distributor or dealer, as defined in part 6 of this chapter, who has paid any tax and fees due under parts 6 and 9 of this chapter may apply for a refund of any tax or fees paid on any gasoline subsequently sold free of tax to a governmental body holding an exemption permit issued by the Commissioner.

(b) (1) Any application for refund shall be filed with the Commissioner, on forms prescribed by the Commissioner, on or before the last day of the second month following the month in which any exempt sales were made. All sales on which a refund is due in any month shall be included in one (1) application for refund.

(2) After January 1 and no later than March 31 of any year, a dealer, distributor or seller licensee may make application for refund under subsection (a) for any exempt sales made during the previous calendar year on which a claim for refund has not previously been paid. Only one (1) such omnibus claim shall be permitted. Such omnibus claim is designed to allow claimants to secure refunds on items previously omitted on claims filed under subdivision (b)(1). No extension of time to file this omnibus claim shall be allowed.

(c) Any applications for refund shall contain all information as required by the Commissioner. In addition, all applications must be accompanied by copies of all

invoices for sales on which the dealer or distributor is applying for refund. The invoices submitted with any such application shall each contain the governmental unit exemption permit number for the governmental unit to which the sales reflected on the invoice were made.

(d) (1) Any application for refund submitted to the Department which does not comply with any of the provisions set out above shall not be approved and a refund shall not be granted.

(2) Dealers and distributors shall not be entitled to a refund on sales made to any person who does not hold a valid governmental unit exemption permit at the time of such sale.

(e) Applications for refund made pursuant to this section shall not be subject to the provisions of § 67-1-707.

SECTION 8. Tennessee Code Annotated, Section 67-3-405, is amended so that, as amended, it shall read as follows:

Any governmental unit using, storing, distributing or selling gasoline in any manner except strictly in accordance with the provisions of this part shall be liable for the state gasoline tax or the special tax on petroleum products, and, in the event of such liability, the tax may be collected in the manner now provided by law for the collection of state gasoline taxes.

SECTION 9. Tennessee Code Annotated, Section 67-3-802, is amended so that, as amended, it shall read as follows:

As used in this part, unless the context otherwise requires:

(1) "Commissioner" means the Commissioner of Revenue;

(2) "Computer type pump" means any pump, electric or other, used to dispense fuel, which has meters for registering the total sales price and gallons sold, and displays the price per gallon on the dispenser;

(3) "Department" means the Department of Revenue;

(4) "Distributor" means A person who acquires motor vehicle fuel from a supplier or from another distributor for resale;

(5) "Undyed fuel" or "motor vehicle fuel" means any combustible gas or liquid except liquefied gas as defined in the Liquefied Gas Tax Law, compiled in part 11 of this chapter, used in an internal combustion engine for the generation of power to propel a motor vehicle and its auxiliary unit, if any, or to operate an auxiliary engine attached to a motor vehicle, or a trailer or semitrailer pulled by a motor vehicle of any kind or character on the public highways, except those fuels which are subject to the tax imposed by part 6 of this chapter;

(6) "Importer-user" means any person who imports motor vehicle fuel into Tennessee for the purpose of consumption in a motor vehicle owned, leased, or otherwise controlled by such person;

(7) "Kerosene" has the same meaning as defined by the American Society for Testing and Materials Standards for kerosene;

(8) "License" means an uncanceled license issued by the Commissioner;

(9) "Licensee" means a person who is a qualified holder of an uncanceled license issued by the Commissioner;

(10) "Motor vehicle" means any vehicle, engine, machine, or mechanical contrivance which is operated by an internal combustion engine or motor;

(11) "Person" means any individual, association, firm, partnership, or corporation, including a receiver, trustee, conservator or other officer appointed by any state or federal court;

(12) "Rack" means a mechanism for delivering motor vehicle fuel from a refinery or terminal into a transport truck, railroad tank car, or other means of transfer that are outside the terminal bulk transfer system.

(13) "Retail filling station" means any service station, garage or other outlet dispensing fuel or gasoline from a container equipped with a computer type pump that measures fuel passing through it;

(14) "Sale" means the first transfer or delivery of undyed fuel through a terminal rack in this state by any person. "Sale" also means the importation of undyed fuel by any person into this state in such person's own conveyance or by common carrier or otherwise. "Sale" does not include any transfer or delivery of kerosene, even if undyed, placed either into a hand pump or computer type pump, that may have flexible hosing attached thereto, or into a pressure vessel container, which is not used in a motor vehicle on the public highways. "Sale" also does not include the transfer or delivery of kerosene, even if undyed, from one licensee to another licensee. "Sale" also does not include a terminal bulk transfer;

(15) "Dyed fuel" means any fuel which is dyed pursuant to federal law or regulations issued by either the United States internal revenue service or the United States environmental protection agency.

(16) "Supplier" means any person who owns and stores motor vehicle fuel in a pipeline terminal facility or a marine terminal facility in this state, or any person who refines and stores motor vehicle fuel at a refinery in this state;

(17) "Terminal" means a motor vehicle fuel storage and distribution facility that is supplied by pipeline or marine vessel and from which such fuel may be removed at the rack;

(18) "Terminal Bulk Transfer" means either:

(a) A marine barge movement of fuel from a refinery to a terminal or from a terminal to another terminal;

(b) Pipeline movements of fuel from a refinery to a terminal or from a terminal to another terminal;

(c) Book transfers of fuel within a terminal between suppliers prior to removal through a terminal rack; or

(d) Exchanges between licensed suppliers.

(19) "Terminal Operator" means any person who owns, operates, or otherwise controls a terminal.

(20) "Transporter" means a person required to be licensed to transport fuel in this state and who is not otherwise required to be licensed by this part.

SECTION 10. Tennessee Code Annotated, Section 67-3-804, Is amended so that, as amended, it shall read as follows:

(a) It is unlawful for any person to sell, deliver, transport, or import in bulk for such person's own consumption, dyed or undyed fuel in this state unless the person is a holder of an uncanceled license as a supplier, distributor, importer-user, or transporter. It is unlawful for any supplier, or distributor to make sales to an importer-user licensee of taxable fuel without collection of the tax imposed by § 67-3-803; and it is unlawful for any importer-user to make purchases from a supplier, distributor, or terminal operator without payment of the tax. Every importer-user is subject to all statutory provisions and rules relating to a distributor. It is also unlawful for any distributor to make sales of fuel to a person, who meets or claims to meet the qualifications of a distributor in this part, who does not possess a valid license from the Commissioner, without the collection of the tax imposed by § 67-3-803, and the distributor shall be liable for tax due on such sales. It is also unlawful for any person to operate a terminal in this state unless the person is the holder of an uncanceled license as a terminal operator.

(b) The license required under subsection (a) shall indicate the number assigned to each licensee and any other information the Commissioner may prescribe. Any person who sells or delivers either taxable or tax exempt fuel or any person who operates a terminal in this state without the license commits a Class A misdemeanor.

(c) To procure the license, every person shall file with the Commissioner an application in such form as the Commissioner may prescribe and otherwise comply with the provisions of this part.

SECTION 11. Tennessee Code Annotated, Section 67-3-806, is amended so that, as amended, it shall read as follows:

(a) Concurrently with the filing of an application for a license as a supplier, distributor, terminal operator, or importer-user the applicant shall file a bond with the Commissioner. No license shall be issued under any application unless accompanied by the bond.

(b) A person applying for a license shall file a bond with the Commissioner payable to the state of Tennessee in a penalty amount determined in the manner provided in § 67-3-104, and the provisions of §§ 67-3-105 - 67-3-107 shall likewise be applicable to the bond.

SECTION 12. Tennessee Code Annotated, Section 67-3-807, is amended so that, as amended, it shall read as follows:

The Commissioner shall issue to the applicant a license when the application in proper form has been accepted for filing, the bond has been accepted and approved, and the other conditions and requirements of this part have been met. It shall remain in full force and effect until canceled as provided in this part.

SECTION 13. Tennessee Code Annotated, Section 67-3-808, is amended so that, as amended, it shall read as follows:

A license issued by the Commissioner shall not be assignable or transferable. It shall be valid only for the person in whose name issued.

SECTION 14. Tennessee Code Annotated, Section 67-3-809, is amended so that, as amended, it shall read as follows:

A current list of licensees may be provided to all licensees as is deemed necessary by the Commissioner.

SECTION 15. Tennessee Code Annotated, Section 67-3-810, is amended so that, as amended, it shall read as follows:

For the purpose of determining the amount of tax imposed by this part, each licensee shall file with the Commissioner, on a form prescribed by the Commissioner, a monthly report not later than the twenty-fifth (25th) day of each calendar month which shall include any information as required by the Commissioner. The report shall be executed under a declaration of penalty of perjury and shall be filed each month whether or not any dyed or undyed fuel was sold or used in the immediately preceding month.

SECTION 16. Tennessee Code Annotated, Section 67-3-813, is amended so that, as amended, it shall read as follows:

(a) Whenever a licensee ceases to engage in business as such within this state, it shall be the duty of the licensee to notify the Commissioner in writing within fifteen (15) days after discontinuance. Any and all taxes, penalties, and interest assessable but not then due and payable, together with any and all interest accrued or penalties imposed under this part, notwithstanding any other provisions thereof, shall become due and payable concurrently with the discontinuance. It is the duty of the licensee to make a report and pay all taxes, interest and penalties due and to surrender to the Commissioner the license issued by the Commissioner.

(b) Any person who violates any provision of subsection (a) commits a Class C misdemeanor.

SECTION 17. Tennessee Code Annotated, Section 67-3-814, is amended so that, as amended, it shall read as follows:

Upon receipt of a written request from any licensee to cancel the license issued to the licensee, the Commissioner shall have the power to cancel the license effective sixty

(60) days from the date of the written request. No license shall be canceled upon the request of any licensee until and unless, prior to the date of the cancellation, there is paid to the state all excise taxes payable by the licensee together with any and all penalties, interest and fines accruing under any of the provisions of this part and there is surrendered to the Commissioner the license issued to the licensee, or there is submitted an affidavit explaining the licensee's inability to do so to the satisfaction of the Commissioner.

SECTION 18. Tennessee Code Annotated, Section 67-3-815, is amended so that, as amended, it shall read as follows:

If, upon investigation, the Commissioner ascertains and finds that any licensee, is no longer required to be qualified as such, the Commissioner shall have the power to cancel the license by filing notice of the cancellation mailed to the last known address of the person. When so notified, the license issued to the person shall be surrendered to the Commissioner.

SECTION 19. Tennessee Code Annotated, Section 67-3-818, is deleted in its entirety.

SECTION 20. Tennessee Code Annotated, Section 67-3-820, is deleted in its entirety.

SECTION 21. Tennessee Code Annotated, Title 67, Chapter 3, Part 8, is amended by adding a new section as follows:

(a) The supplier liable for the payment of the tax shall not require payment to itself from the supplier's immediate vendee of a sum equal to the tax earlier than the date on which the tax becomes finally due and payable to the state, if the immediate vendee is a distributor and has made and maintains a bond to the supplier, at the option of the supplier, in an amount sufficient to cover any tax paid to the state by the supplier on fuel sold to the distributor. The bond required shall not exceed two hundred percent (200%) of the tax paid in that month of the greatest tax payment during the immediately

preceding twelve (12) months by the supplier on sales made by the supplier to the distributor making bond.

(b) Any supplier or distributor paying the tax who, in turn, sells or distributes such fuel to another, whether or not for use, shall include tax as part of the selling price of the fuel, subject to the provisions of subsection (a). Any person who subsequently resells such fuel shall include the tax paid as part of the selling price of the fuel. Such tax shall, however, be included in the sales price of the fuel, as that term is used in the Retailers' Sales Tax Act, compiled in Chapter 6 of this title, for purposes of calculating any applicable sales or use tax.

(c) The provisions of this section shall not apply to the federal government.

SECTION 22. Tennessee Code Annotated, Title 67, Chapter 3, Part 8, is amended by adding a new section as follows:

(a) A supplier or distributor is entitled to an allowance as reimbursement for expenses incurred in behalf of the state in furnishing a bond, maintaining records, collecting tax moneys, and preparing reports and remittances in compliance with this part.

(b) The allowance shall be an amount equivalent to one and one-half percent (1.5%) of the amount of tax shown to be due on the monthly report filed with the Commissioner as provided in this part. It may be deducted by way of credit. There shall be submitted with the report, in support of the deduction, the certificate of the supplier that, with respect to the gallonage sold or distributed within this state by the supplier during the period covered by the report, there was paid or credited to each distributor to whom any part of the gallonage was sold or distributed an amount equivalent to one and one-half percent (1.5%) of the tax applicable to the gallonage, and to each retailer to whom any part of the gallonage was sold or distributed an amount equivalent to one half of one percent (.5%) of the tax applicable to the gallonage. In addition, there shall be

submitted a certificate by each distributor to the distributors supplier that with respect to all gallonage sold or distributed during the period by the distributor to retailers, the distributor has paid or credited to the retailers an amount equivalent to one half of one percent (.5%) of the tax applicable to the gallonage. If any distributor fails to certify to the distributor's supplier that the distributor has paid or credited to retailers this amount, the supplier must certify only that the jobber was paid or credited an amount equivalent to one half of one percent (.5%) of the tax applicable to the gallonage sold or distributed to the jobber.

(c) Any person required to pay the tax shall preserve and make available for inspection by a representative of the Department all invoices and credit memoranda reflecting payments or credits to purchasers of the amounts of the allowance provided for in this section. These records shall be preserved for a period of not less than three (3) years from December 31 of the year in which issued.

SECTION 23. Tennessee Code Annotated, Title 67, Chapter 3, Part 8, is amended by adding a new section as follows:

An allowance, covering loss of gallonage due to fire, flood, storm, theft or other causes over which a distributor has no control (exclusive of loss resulting from causes listed under general rule), will be made if the loss is immediately reported to the Commissioner. A statement executed under the penalty of perjury setting out a complete description of the loss sustained, together with the further facts as to the nature of the casualty and the date, time and place it occurred is required. This special allowance may be granted only where proof of loss is deemed satisfactory to the Commissioner.

SECTION 24. Tennessee Code Annotated, Section 67-3-904, is amended so that, as amended, it shall read as follows:

(a) Every supplier or distributor as defined in §§ 67-3-602 and 67-3-802 , shall, in addition to all other taxes levied under parts 6 and 8 of this chapter, pay a special tax

on the same privileges and incidences as those specified in Parts 6 and 8 of this Chapter . The tax shall be one cent (1¢) per gallon on all petroleum products sold or used or stored in this state.

(b) In addition to the special tax levied in subsection (a), there is also levied an environmental assurance fee as provided in § 68-215-110. This fee is to apply to the same tax incidences as the special tax levied in subsection (a) and is to be paid to the Department, and shall be administered as a special tax as provided in this part.

SECTION 25. Tennessee Code Annotated, Section 67-3-906, is amended so that, as amended, it shall read as follows:

(a) Each supplier or distributor shall, within twenty (20) days after the end of each month, and whether or not tax is owed, make out on forms prescribed by the Commissioner and deliver to the Department a true statement showing, with respect to the preceding calendar month, the following:

(1) The total number of gallons of petroleum products compounded, refined, manufactured, or produced by the supplier or distributor in this state;

(2) The total number of gallons of petroleum products transported, imported, or caused by the supplier or distributor to be imported into this state;

(3) The total number of gallons of petroleum products sold, or used, or stored, or distributed by the supplier or distributor in this state;

(4) The total amount of tax due the state as a result thereof for the month;
and

(5) Any other further and different information as the Commissioner may require.

(b) Each person, other than a supplier or distributor, required to pay the tax shall file a statement with the Commissioner as required by this section and shall conform in all other respects to the provisions of this Section.

SECTION 26. Tennessee Code Annotated, Section 67-3-907, is amended so that, as amended, it shall read as follows:

(a) The total amount due the state as taxes shall be payable on the first day of each month with respect to the tax accruing in the preceding calendar month.

(b) The supplier or distributor liable for payment of the tax shall not require payment his immediate vendee of a sum equal to the tax earlier than the date on which the tax becomes finally due and payable to the state, if the immediate vendee is a distributor. At the option of the distributor, the immediate vendee shall, however, make and maintain a bond to the supplier or distributor in an amount sufficient to cover any special tax payable to the state by the supplier or distributor on gasoline or motor vehicle fuel sold to the supplier. The bond amount required shall not exceed two hundred percent (200%) of the special tax paid by the supplier or distributor on sales made to the wholesaler in the highest month of the immediately preceding twelve (12) months.

SECTION 27. Tennessee Code Annotated, Section 67-3-908, is amended so that, as amended, it shall read as follows:

Any supplier or distributor paying the tax levied by this part who, in turn, sells or distributes such fuel to another, whether or not for use, shall include tax as part of the selling price of the fuel, subject to the provisions of § 67-3-907(b). Any person who subsequently resells such fuel shall include the special tax paid as part of the selling price of the fuel. Such tax shall, however, be included in the sales price of the fuel, as that term is used in the Retailers' Sales Tax Act, compiled in Chapter 6 of this title, for purposes of calculating any applicable sales or use tax.

SECTION 28. Tennessee Code Annotated, Section 67-3-910, is amended so that, as amended, it shall read as follows:

(a) Whenever any petroleum products are stored in this state, or whenever any of the products have come to rest after shipment in interstate commerce and are stored

in this state, except when stored at or shipped to or from a petroleum refinery located in this state, and the products are subsequently exported to points outside this state, nineteen twentieths of one cent (19/20¢) per gallon of the tax levied under this part may be credited on a monthly return or it may, in the alternative, be refunded.

(b) A special tax of only one twentieth of one cent (1/20¢) per gallon is levied upon any of the petroleum products temporarily stored in this state and subsequently exported to points outside this state if the tax levied under this part has not been paid. Suppliers or distributors of the exported petroleum products, as described in this subsection, shall make reports to the Commissioner and pay the special tax herein levied in like manner as the other special tax levied by § 67-3-904.

(c) (1) All petroleum products which are exported to points outside the state shall only be subject to a tax of one twentieth of one cent (1/20¢) per gallon as levied in subsection (b). There shall be no liability for the taxes levied under parts 1-8 of this chapter. There shall be no liability for any other tax levied under this part. It is the legislative intent to make a separate classification for the petroleum products described herein which are exported to points outside the state. Where paid, the tax may be refunded or credited.

(2) "Exported to points outside the state," as used in this subsection (c), applies to and includes diesel fuel oil which is stored within this state but is carried outside the state in the tanks of diesel locomotives or vessels, for consumption in such locomotives or vessels outside the state. "Exported to points outside the state" also applies to and includes aviation gasoline and jet fuel which is stored within the state, but is carried outside the state in the tanks of airplanes owned or leased by commercial air carriers for consumption in such airplanes outside the state.

(d) (1) For petroleum products exported to points outside the state for resale, to obtain a refund, a refund claim and certification from the receiving state acknowledging

receipt of the petroleum products, tax returns filed in the receiving state and/or proof of payment, or other documents showing proof of export satisfactory to the Commissioner, must be filed. To take a credit for such products exported for resale, the credit must be taken on a report filed within ninety (90) days of the last day of the month in which the export was made. The Commissioner may require certification from the receiving state acknowledging receipt of the petroleum products, tax returns and/or proof of payment filed in the receiving state or other documents showing proof of export. A claim for refund and all support documentation must be received within three (3) years from December 31 of the year in which the export activity occurred in order to receive a refund. If credit is taken and no certification or other documentation satisfactory to the Commissioner is received within one (1) year from the end of the month in which the export activity occurred, then tax, penalty and interest may be assessed and collected; however, if the certification or other proof satisfactory to the Commissioner is received within three (3) years from December 31 of the year in which the export activity occurred, then the tax, penalty and interest collected will be refunded. The Commissioner may assess and collect tax, penalty and interest prior to the expiration of the one-year period indicated herein if substantial evidence indicates that the product, on which taxes have been credited, remained in Tennessee.

(2) For petroleum products carried outside the state in the tanks of diesel locomotives, vessels, or airplanes owned or leased by commercial air carriers for consumption in such locomotives, vessels or airplanes outside the state, refund claims shall be filed within ninety (90) days of the last day of the month in which the export was made. If a credit is being taken for such products exported for consumption, the credit shall be taken on a report filed within the same ninety-day period.

(e) (1) Any distributor, dealer or other person storing petroleum for export shall execute a bond which, in the opinion of the Commissioner, is adequate to protect the

state against loss of any taxes otherwise due in case the products are not actually exported outside the state.

(2) When the bond required under this subsection is executed and is determined by the Commissioner to be in proper form, a refund of the tax authorized under either § 67-3-909 or this section may be made by the Commissioner prior to certification or audit.

(f) The Commissioner may promulgate rules controlling the export or movement to other states of petroleum products with respect to the modes of transportation. The provisions of the rules shall apply where the export or movement beyond the state is made in compliance with this part.

SECTION 29. This act shall become effective January 1, 1997 the public welfare requiring it.

AN ACT to amend Tennessee Code Annotated, Title 67, Chapter 3, to provide for the taxation of motor vehicle fuel at the point such fuel is first sold in Tennessee.

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